

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



v

LANCASTER MOTOR INN

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:48 I illegal deductions
RSA 275:43 I unpaid commissions

Date of Hearing: June 1, 2015

Case No. 50225

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on April 9, 2015. The notice was sent to the employer and there was an objection. The objection was sent to the claimant and there was a request for a hearing. The Notice of Hearing was sent to both parties on May 11, 2015.

The claimant testified that she worked for the employer "on and off" for two years. She was an hourly employee and kept a time sheet for recording purposes. Because she worked at the Inn and because she lived there, her wages went towards the payment of her rent. Her rent was \$195.00 per week.

At some point in her residency at the Inn, the employer sought a bid for the cleaning of carpets at the Inn. The claimant and another woman bid on the job and were doing the cleaning at various times when they could fit it into their schedules. The claimant also had another full time job during most of this period of time.

The claimant said that she is due \$267.00 on the carpet contract. She also testified that there were child support payments not made for her court order and she is seeking \$286.02 in support payments that were recorded and never paid. The child support order came from Alaska but was transferred to the employer in New Hampshire. The claimant did state that she was behind in her rent payments. She also testified that part of her Federal Income Tax refund was taken to pay off the debt on the child support.

All the hourly wages were paid to the claimant for her part-time work at the Inn.

The employer testified that the claimant did work part-time for the Inn and was paid for all recorded hours worked. The claimant did bid on a contract to clean the carpets in the rooms and did this on her own schedule. This work was not a part of her hourly part-time job. The claimant was considered an Independent Contractor for the rug cleaning.

The claimant lived at the Inn and used her wages to offset the rent. This was not working out and the claimant was approximately \$6,000.00 in debt for the back rent. At about this time the claimant lost her full time job and the employer had to start an eviction process. The employer testified that he believes this action caused the claimant to become bitter and to start filing actions against him.

The employer further testified that he paid the child support order when the claimant made enough money to cover the child support amount due. The employer testified that all the payments were made and that a recent Department of Labor review showed that the time was paid and the amount received by the State.

The employer believes that the claimant was an Independent Contractor in accepting the bid for the rug cleaning. The employer further stated that all child support was paid when the claimant earned enough to cover the payment.

FINDINGS OF FACT

RSA 275:43 I Every employer shall pay all wages due to employees within 8 days including Sunday after expiration of the week in which the work is performed, except when permitted to pay wages less frequently as authorized by the commissioner pursuant to paragraph II, on regular paydays designated in advance by the employer and at no cost to the employee:

- (a) In lawful money of the United States;
- (b) By electronic fund transfer;
- (c) By direct deposit with written authorization of the employee to banks of the employee's choice;
- (d) By a payroll card provided that the employer shall provide to the employee at least one free means to withdraw up to and including the full amount of the employee balance in the employee's payroll card or payroll card account during each pay period at a financial institution or other location convenient to the place of employment. None of the employer's costs associated with a payroll card or payroll card account shall be passed on to the employee; or
- (e) With checks on a financial institution convenient to the place of employment where suitable arrangements are made for the cashing of such checks by employees for the full amount of the wages due; provided, however, that if an employer elects to pay employees as specified in subparagraphs (b), (c), or (d), the employer shall offer employees the option of being paid as specified in subparagraph (e), and further provided that all wages in the nature of health and welfare fund or pension fund contributions required pursuant to a health and welfare fund trust agreement, pension fund trust agreement, collective bargaining agreement, or other agreement adopted for the benefit of employees and agreed to by the employer shall be paid by every such employer within 30 days of the date of demand for such payment, the payment to be made to the administrator or other designated official of the applicable health and welfare or pension trust fund.

This is the section of the law that mandates an employer to pay an employee all wages due at the time the wages are due and owing.

RSA 275:48 I No employer may withhold or divert any portion of an employee's wages unless:

(a) The employer is required or empowered to do so by state or federal law, including payroll taxes.

(b) The employer has a written authorization by the employee for deductions for a lawful purpose accruing to the benefit of the employee as provided in regulations issued by the commissioner, as provided in subparagraph (d) or for any of the following:

- (1) Union dues;
- (2) Health, welfare pension, and apprenticeship fund contributions;
- (3) Voluntary contributions to charities;
- (4) Housing and utilities;
- (5) Payments into savings funds held by someone other than the employer;
- (6) Voluntary rental fees for non-required clothing;
- (7) Voluntary cleaning of uniforms and non-required clothing;
- (8) The employee's use of a vehicle under RSA 261:111, III;
- (9) Medical, surgical, hospital, and other group insurance benefits without financial advantage to the employer, when the employee has given his or her written authorization and deductions are duly recorded;
- (10) Required clothing not covered by the definition of uniform;
- (11) Legal plans and identity theft plans without financial advantage to the employer when the employee has given his or her written authorization and deductions are duly recorded; and
- (12) For any purpose on which the employer and employee mutually agree that does not grant financial advantage to the employer, when the employee has given his or her written authorization and deductions are duly recorded. The withholding shall not be used to offset payments intended for purchasing items required in the performance of the employee's job in the ordinary course of the operation of the business. Nothing in this subparagraph shall prohibit a charitable organization from withholding from an employee's wages a voluntary contribution to such charitable organization.

(c) The deductions are pursuant to any rules or regulations for medical, surgical, or hospital care or service, without financial benefit to the employer and openly, clearly, and in due course recorded in the employer's books.

(d) Upon an employee's written request, an employer may deduct the following items from the employee's wages, provided that the employer shall provide a written itemized accounting of such requested deductions to the employee at least once per month:

(1) Voluntary contributions into cafeteria plans or flexible benefit plans, or both, as authorized by section 125 or section 132 of the Internal Revenue Code.

(2) Voluntary payments by the employee for the following:

- (A) Child care fees by a licensed child care provider.
- (B) Parking fees.
- (C) Pharmaceutical items, gift shop, and cafeteria items purchased on site of a hospital by hospital employees.

(3) Voluntary installment payments of legitimate loans made by the employer to the employee as evidenced by a document that includes the following:

- (A) The time the payments will begin and end.
- (B) The amounts to be deducted.

(C) A specific agreement regarding whether the employer is allowed to deduct any amount outstanding from final wages at the termination of employment.

(4) Voluntary payments for the recovery of accidental overpayment of wages when the following conditions are met:

(A) The recovery is agreed to in writing.

(B) The deduction for the overpayment begins one pay period following the date the parties execute the written agreement.

(C) The written agreement specifies:

(i) The date the recovery of the overpayment will begin and end.

(ii) The amount to be deducted, which shall be agreed upon by the employer and the employee but which shall, in no event, be more than 20 percent of the employee's gross pay in any pay period.

(iii) A specific agreement regarding whether the employer is allowed to deduct any amount outstanding from final wages at the termination of employment.

(5) Voluntary payments for the recovery of tuition for non-required educational costs paid by the employer for the employee to an educational institution when the specific deduction is authorized in writing prior to the deduction as evidenced by a document that includes the following:

(A) The time the payments will begin and end.

(B) The amounts to be deducted.

(C) A specific agreement regarding whether the employer is allowed to deduct any amount outstanding from final wages at the termination of employment.

(6) Voluntary payments for the employee's use of a health or fitness facility that is sponsored by the employer for the benefit of its employees and that is located within the employer's facility or workplace, or operated by a private health and fitness facility that offers discounted memberships of 50 percent or more to all employees of the employer, as evidenced by a document that includes the following:

(A) The time the payments will begin and end.

(B) The amounts to be deducted.

(C) A specific agreement regarding whether the employer is allowed to deduct any amount outstanding from final wages at the termination of employment.

(e) The employee requests in writing that deductions may be made for contributions to a political action committee from the employee's wages.

(f) The employer has a written request from the employee, made at the time of the original request without coercion or pressure, that authorizes the employer to deduct from the employee's final wages at the termination of employment any amount the employee may owe for voluntary payments for vacation pay, paid time off pay, earned time pay, personal time pay, annual pay, sick pay, sick dependent pay, and bereavement pay made pursuant to a written employment policy as required by RSA 275:49, III, when the payments have been requested and paid to the employee in advance of eligibility.

This part of the law does not allow for any deductions to be made and then not sent to the intended purpose of the deduction.

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This part of the law places an issue such as commissions under the same section as wages.

It is the finding of the Hearing Officer, based on the written submissions and the testimony of the parties, that the Wage Claim is invalid. The claimant has the burden to show that there are wages due and owing and she did not meet this burden.

In the claim for the wages due for the rug cleaning, it is clear that the claimant bid on a contract and performed the work outside of her recorded hours. If there is money owed on this activity, the Wage Claim process is not the proper forum.

In the matter of child support the employer was credible in his testimony that he paid any order when there were funds available for the payment of the order. The employer was also credible in bringing up the Department of Labor audit that did not show any child support payments made and not sent to the proper authority.

The claimant did not bear her burden in either of these two areas to show that wages had been illegally withheld or that wages were not paid to an employee.

The Wage Claim is invalid.

DECISION AND ORDER

Based on the testimony and evidence presented, as RSA 275:43 I requires that an employer pay all wages due an employee, and as this Department finds the claimant failed to prove by a preponderance of the evidence that she was not paid all wages due, it is hereby ruled that the Wage Claim is invalid.

Thomas F. Hardiman
Hearing Officer

Date of Decision: June 16, 2015

TFH/kdc